

Use of Interest Taken through Condemnation Actions

for the Eminent Domain Subcommittee of the Environmental Quality Council
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There has been much discussion on the "multiple use" of the interest that is taken in condemnation actions. This paper will discuss different concepts related to the multiple use of easements.

The type of interest taken has an impact on what the condemnor can do with the section of land that has been taken. If the interest taken was fee simple title, the condemnor can do whatever they want with the property. They can resell or lease any portion of it without compensation to the original landowner. However, if the interest is something other than fee simple there are other issues to discuss. The term that has been used when discussing the leasing or resale of portions of an interest taken has been the "multiple use of easements."

Multiple use of easements does not have a specific legal definition. The common meaning prescribed to multiple use is two or more activities (or public uses) sharing a common easement. It is assumed that the public uses are compatible and one would not infringe upon the operation of the other.

Since "easement" is defined as a right acquired by public authority to use or control property for a designated purpose, each purpose or public use must be defined within a "multiple use easement" agreement.

There are three main points to address when discussing the multiple use of easements.

1) Can the entity holding the easement legally resell or lease a portion of that easement to a different entity or use?

The easement agreement is the document which would define whether a portion of an easement may be resold or leased for additional uses. If the agreement is broad and allows for the renting or sale of additional uses on the easement, then the entity who originally purchased the easement may legally complete these transactions.

2) Is the landowner who originally owned the land entitled to additional compensation?

Whether or not the original landowner is entitled to additional compensation is also determined by the easement agreement. It all depends on the easement agreement language and what was decided during negotiations. If the easement agreement does not have language in it stating that the original landowner is entitled to additional compensation, the easement holder is not legally responsible for paying the landowner. However, if the easement agreement does state that any additional uses must compensate the original landowner, then it is the entity's responsibility to ensure payment. Again, this question is generally answered by the terms of the easement agreement. It may also be determined by whether the subsequent use burdens the servient tenement (surface owner).

3) Does multiple use of easements have environmental benefits or implications?

The multiple use of easements goes beyond the question of compensation and the reselling of easement rights. In a discussion about multiple use, one must also address the potential environmental effects and impacts of having multiple easements vs. one easement with multiple uses.

An example of having one easement with multiple uses is utility corridors. A "utility corridor" is a strip of land that is under easement that holds more than one type of product, or has more than one entity occupying it. For instance, a utility corridor could hold fiber optic cable, telephone cable, etc. By putting all of these different "uses" into one trench or at least one easement, then the cumulative impact to the environment and to the surface owner is minimized. Consider what would happen if there were three different utility companies that wanted to lay lines through a piece of property. If they were not allowed to share an easement, that would be three separate easements, trenches, construction areas and reclamation activities. However, if the companies were allowed to share an easement, there would potentially be less of an impact to the environment by limiting the amount of ground disturbed. In the instance of a surface owner who is farming the acreage, the benefit would be seen through less total land area being disturbed during construction and in the event of maintenance and repair.

One of the challenges associated with utility corridors is faced by the entities whose lines, pipe, etc., are installed. This challenge is in repairing and improving their particular asset without damage to the other assets held in that easement or trench. The other challenge is the types of assets which can feasibly be contained in the same easement or area. For example, generally, electric lines and gas or oil pipelines are not contained in the same easement because of safety concerns. In this case, the sharing of an easement is not feasible.

In conclusion, there are many different elements to consider when discussing the multiple use of easements. The importance of these factors must be weighed against each other for a conclusion to be achieved.